

**AMENDMENTS TO THE DRAWINGS**

Please amend Figure 4 as shown in the replacement sheet filed herewith. A redline copy of Figure 4 showing the changes is enclosed for the Examiner's convenience.

### **REMARKS**

In view of the above amendments and following remarks, Applicant believes the pending application is in condition for allowance. Prior to issuance of the Office Action dated May 20, 2005, claims 10-16 were pending for substantive examination. By this amendment, claims 10 and 16 have been amended to expedite prosecution. In addition, Paragraph 0029 of the specification and Figure 4 have been amended to add a reference number.

#### **A. Rejections Under 35 U.S.C. § 102**

In the Office Action, the Examiner rejected claims 10-16 under 35 U.S.C. § 102(e) as being anticipated in view of U.S. Patent Application No. 2003,0172553 (Truelsen). As is known, anticipation under 35 U.S.C. § 102 "requires that each and every element of the claimed invention be disclosed in a prior reference." *Akzo v. U.S. Int'l Trade Comm'n*, 1 U.S.P.Q.2d 1241 (Fed. Cir. 1986). Applicant respectfully submits that Truelsen does not disclose each and every element of the midsole assembly as claimed, and therefore cannot anticipate the claimed invention.

Claim 10 is directed to a midsole assembly for a running sandal. The assembly has a flexible midsole body having a heel portion, an arch portion, and a forefoot portion. A curved forefoot plate is connected to the forefoot portion of the flexible midsole body. The curved forefoot plate has a partially concave shape and a stiffness greater than the stiffness of the midsole body, and the curved forefoot plate has an integral flexible portion extending substantially between a lateral and medial side of the curved forefoot plate when the sandal is assembled. Claim 10 has been amended to clarify that the curved forefoot plate is adjacent to the forefoot portion of the midsole body.

Truelsen is directed to a shoe midsole that provides "walking comfort", for example, in a hiking shoe. See, Truelsen, paragraphs [0001], [0023], and claim 1. Truelsen

discloses a midsole having a soft EVA portion and an elastic insert portion (16) having a hand-like shape with at least two finger-shaped zones pointing toward the toe end of the sole. The insert is shown and describe as extending from the sole's heel area, through the arch area and to the "ball-of-the-foot" zone. The insert has fingers-shaped zones in the ball-of-the-foot zone, and the fingers may be provided with substantially parallel corrugations (Figures 4 and 5). The insert can also include bending lines having varying radius of curvatures, and the front ends of the bending lines bend "upwardly" (i.e. extend forwardly) toward the hallux zone (13), as is shown in Figure 1.

Truelsen does not teach or suggest a "midsole assembly for a running sandal" (emphasis added) as claimed. To the contrary, Truelsen discloses a midsole for a walking shoe, i.e. a hiking shoe. Truelsen does not teach a forefoot plate. Truelsen teaches at least a 3/4-length foot plate extending under the arch between the toe and heel areas. Further, Truelsen does not teach or suggest a midsole assembly having a curved forefoot plate connected to the forefoot portion of a flexible midsole body, wherein the curved forefoot plate at the forefoot portion has a partially concave shape and a stiffness greater than the stiffness of the midsole body. Truelsen is silent regard such a curved forefoot plate. Not only is the text of Truelsen is silent regarding the curved forefoot plate as claimed, the figures of Truelsen indicate that the insert is flat, not concave. The only teaching of the claimed curved forefoot plate with the partially concave shape, which promotes the natural rolling action of a wearer's gate while running, is provided by the current application.

This silence of Truelsen regarding a midsole construction for a running sandal is understandable because of the purpose of Truelsen's midsole with the flat insert is for a hiking shoe. The flat insert of Truelsen is specifically designed so, "due to its elasticity said elastic portion induces a "push-off" effect in the foot at the start of a step....The finger-shaped zone may provide the wearer with an extra push during the last part of a step when descending the inclined surface." Truelsen, Paragraph [0007]. Accordingly, Truelsen teaches a flat, elastic spring plate, and the reference teaches away from the partially

concave shape of the running sandal's curved forefoot plate, which promotes the naturally rolling action of the wearer's gate while running.

In view of the above, Truelsen does not disclose a midsole assembly for a running sandal with each and every element of the claims in the present application. Truelsen does not teach or suggest modifying the hiking shoe midsole to provide a running sandal midsole with a curved forefoot plate as claimed. Any such modification of the Truelsen midsole to provide the midsole assembly for running sandal as claimed would only be apparent to one of ordinary skill in the art after understanding the present information and applying impermissible hindsight analysis. Therefore, the pending claims of the present application are patentable and are in condition for allowance.

Claims 11-16 depend from claim 10. Applicant respectfully submits for the above reasons and the features of the claims that the dependent claims are also patentable over the cited reference. Further, the curved forefoot plate of dependent claim 14 includes a central stiffening rib extending longitudinally. In the Office Action, the Examiner asserts that Truelsen discloses "a central stiffening rib (18b)." Applicant respectfully disagrees with the Examiner's interpretation of the reference. Reference number 18b of Truelsen refers to one of the three "finger zones" pointing toward the toe of the sole. Further, the finger zone 18b of the sole is disclosed as having parallel corrugations, which "provide the finished sole with a high flexibility." See, Truelsen, paragraphs [0008] and [0011]. Accordingly, the finger zone 18b referred to by the Examiner is a toe portion of a flexible spring plate, and it is not a central stiffening rib extending longitudinally along a curved forefoot plate as claimed.

Regarding claim 15, the curved forefoot plate of this claim includes integral outer stiffening ribs extending longitudinally. For the reasons discussed above, claim 15 is also patentable over Truelsen and is in condition for allowance.

Claim 16 has been amended to clarify that the curved forefoot plate has side tabs that seat within a correspondingly shaped shallow cavity formed in the midsole body adjacent to the forefoot portion forward of the arch portion. Truelsen does not disclose or teach the curved forefoot plate as claimed in amended claim 16. Therefore, Applicant respectfully submits that claim 16 is patentable over Truelsen and is in condition for allowance.

B. Objection to Drawings

In the Office Action, the Examiner objected to the drawings in view of the outer stiffening rib set forth in claim 15. Applicant has revised Figure 4 to add reference number 53 showing the outer stiffening rib. No new matter has been added. Applicant has included redline copy of Figure 4 showing the change is enclosed for the Examiner's convenience. A replacement sheet showing revised Figure 4 is also enclosed. Paragraph 0029 of the specification has also been amended to add reference number 53. In view of the amendment to Figure 4 and the specification, Applicant respectfully submits that the objection to the drawings has been overcome.

C. Conclusion

In light of the foregoing amendments and remarks, all of the pending claims are in condition for allowance. Applicant, therefore, requests reconsideration of the application and an allowance of all pending claims. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 325428003US1 from which the undersigned is authorized to draw. If the Examiner wishes to discuss the above-noted distinctions between the claims and the cited references, or any other distinctions, the Examiner is encouraged to contact Mr. Woolston

by telephone. Additionally, if the Examiner notices any informalities in the claims, he is also encouraged to contact Mr. Woolston to expediently correct any such informalities.

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Respectfully submitted,

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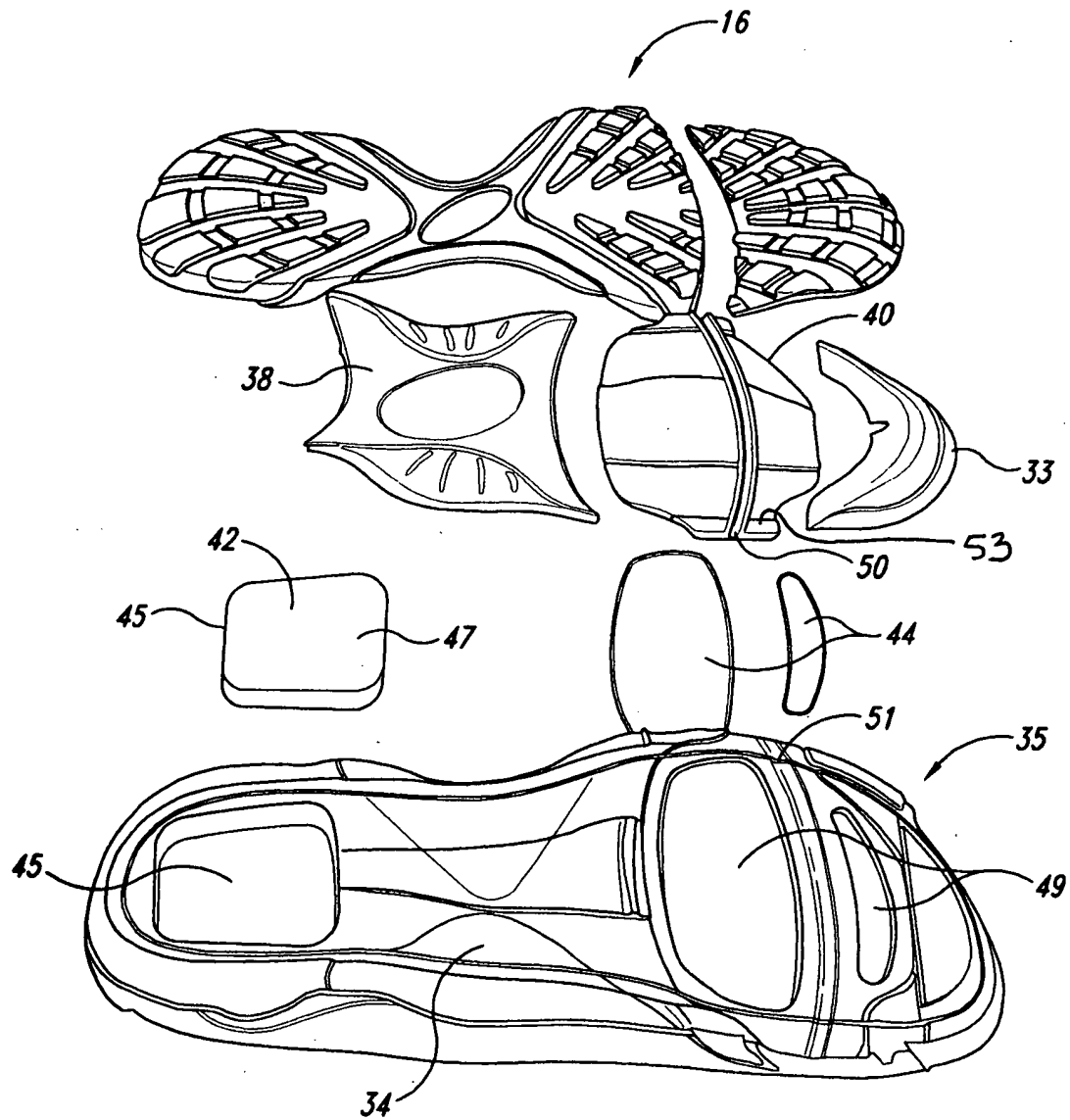
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*Fig. 4*